

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SACRAMENTO SESSION
NOVEMBER 3 and 4, 2004**

The following cases are placed upon the calendar of the Supreme Court for oral argument at its courtroom in the Stanley Mosk Library and Courts Building, Sacramento, California, on November 3 and 4, 2004.

WEDNESDAY, NOVEMBER 3, 2004—1:30 P.M.

- | | | |
|-----|---------|---|
| (1) | S110328 | Home Insurance v. Superior Court, County of Los Angeles;
Montrose Chemical (<i>Chin, J., not participating; Turner, P.J.,
assigned Justice Pro Tempore.</i>) |
| (2) | S033440 | People v. Vicente F. Benavides [<i>Automatic Appeal</i>] |
| (3) | S018909 | People v. Robert Young [<i>Automatic Appeal</i>] |

THURSDAY, NOVEMBER 4, 2004—9:00 A.M.

- | | | |
|-----|---------|-----------------------------------|
| (4) | S111029 | In re Dannenberg on Habeas Corpus |
| (5) | S111309 | People v. Betts |
| (6) | S108353 | People v. Howard |

1:30 P.M.

- | | | |
|-----|---------|--|
| (7) | S119869 | American Financial Services v. City of Oakland |
| (8) | S109746 | Burris v. Superior Court, County of Orange; People |
| (9) | S119294 | People v. Lopez |

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SACRAMENTO SESSION
NOVEMBER 3 and 4, 2004**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

WEDNESDAY, NOVEMBER 3, 2004—1:30 P.M.

(1) Home Insurance v. Superior Court, County of Los Angeles; Montrose Chemical, S110328 (Chin, J., not participating; Turner, P.J., assigned Justice Pro Tempore.)

#02-179 Home Insurance v. Superior Court, County of Los Angeles; Montrose Chemical, S110328. (B157650; 101 Cal.App.4th 515.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: When an insured sues its primary and excess insurers in a single action, are the insurers' interests substantially adverse as a matter of law such that each is entitled to exercise a separate peremptory challenge to the trial judge under Code of Civil Procedure section 170.6?

(2) People v. Vicente F. Benavides, S033440 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(3) People v. Robert Young, S018909 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

THURSDAY, NOVEMBER 4, 2004—9:00 A.M.

(4) In re Dannenberg on Habeas Corpus, S111029

#03-02 In re Dannenberg on Habeas Corpus, S111029. (A095299; 102 Cal.App.4th 95; Superior Court of Marin County, SC112688A.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order granting a writ of habeas corpus. The court limited review to the following issue: At a parole suitability hearing that is held pursuant to Penal Code section 3041, must the Board of Prison Terms generally engage in a comparative proportionality analysis with respect to offenses of similar gravity and magnitude and consider base-term matrices used by the board in setting release dates and deny a parole date solely on the basis of the circumstances of the offense only when the offense is particularly egregious, or may the board first determine whether the inmate is suitable for parole because he or she is no longer a threat to public safety and engage in a proportionality analysis only if it finds the inmate suitable for parole?

(5) People v. Betts, S111309

#03-01 People v. Betts, S111309. (E029720; 102 Cal.App.4th 922; Superior Court of Riverside County, RIF089681.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Should the determination whether California courts had jurisdiction over crimes committed outside the state but initiated inside the state be made by the trial court or the jury? (2) Was the evidence sufficient to give California courts jurisdiction over defendant's crimes? (3) Was venue proper in Riverside County over a crime initiated there but completed in Los Angeles County? (4) Is the question of venue a matter to be determined by the trial court or the jury?

(6) People v. Howard, S108353

#02-151 *People v. Howard*, S108353. (F036961; 99 Cal.App.4th 43.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Is the offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2) a felony inherently dangerous to human life for purposes of the second degree felony-murder rule? (2) Is the offense of proximately causing death or serious bodily injury by willful flight from a pursuing police officer (Veh. Code, § 2800.3) a more specific offense precluding application of the second degree felony-murder rule where death occurs during the offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2)?

1:30 P.M.

(7) American Financial Services v. City of Oakland, S119869

#03-157 *American Financial Services v. City of Oakland*, S119869. (A097784, A100258; 111 Cal.App.4th 1435; Superior Court of Alameda County, 2001-027338.) Petition for review after the Court of Appeal reversed in part and otherwise affirmed the judgment in a civil action. This case includes the following issue: Is the city's local ordinance regulating "sub-prime lending" preempted by state law? (See Fin. Code, §§ 4970, 4971.)

(8) Burris v. Superior Court, County of Orange; People, S109746

#02-166 *Burris v. Superior Court, County of Orange; People*, S109746. (G028636; 100 Cal.App.4th 1006.) Petition for review after the Court of Appeal denied a petition for peremptory writ of prohibition. This case presents the following issue: When the prosecution initially files a complaint charging driving under the influence as a misdemeanor and then, after discovering that the defendant has a prior conviction for driving under the influence, dismisses the misdemeanor complaint and files a new complaint charging the same offense as a

felony, is the felony complaint valid or does the prior dismissal of the misdemeanor complaint bar the filing of the felony complaint? (See Pen. Code, § 1387.)

(9) People v. Lopez, S119294

#03-136 People v. Lopez, S119294. (B161668; unpublished opinion; Superior Court of Los Angeles County, BA212534.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issue: Is a defendant who is convicted of first degree murder with a finding that the crime was committed for the benefit of a criminal street gang within the meaning of Penal Code section 186.22 subject to an enhancement of 10 years under section 186.22(b)(1)(C) or instead to a minimum parole eligibility term of 15 years under section 186.22(b)(5), which applies where the defendant is convicted of “a felony punishable by imprisonment in the state prison for life”?